

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ESTATE OF WANGSHENG LENG, by
and through administrator, LIPING YANG,

Plaintiffs,

V.

THE CITY OF ISSAQAH, ISSAQAH
POLICE OFFICER M. LUCHT #1201, and
ISSAQAH POLICE OFFICER KYLEN
WHITTOM, #1210,

Defendants.

No. 2:19-cv-00490-TSZ

~~[PROPOSED] JOINT PRETRIAL
ORDER (REVISED)~~

I. JURISDICTION

The Court has original jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction). The court has jurisdiction over state law claims under 28 U.S.C. § 1337.

II. CLAIMS AND DEFENSES

A. Plaintiff intends to pursue the following claims at trial:

1. Excessive Force (Officers Lucht and Whittom)
2. Negligence (City of Issaquah)
3. ~~Compensatory damages (Officers Lucht and Whittom and City of Issaquah)~~
4. ~~Punitive Damages (Officers Lucht and Whittom)~~

1 **B. Defendants intend to pursue the following affirmative defenses and/or**
2 **claims:** 1. Mitigation.

2 1. ~~The amount of force used by Officers Kyle Whittom and Mike Lucht was~~
3 ~~reasonable, necessary and lawful under the totality of the circumstances~~
4 ~~presented to them at the time of the incident.~~
5 2. ~~Mr. Leng's injury and damages, if caused by the officers, were the result of~~
6 ~~reasonable and required conduct of the officers under the totality of the~~
7 ~~circumstances presented, and the conduct was excusable and justifiable in~~
8 ~~connection with Mr. Leng's own conduct during the incident in question.~~

9 **III. ADMITTED FACTS**

10 1. Officer Kyle Whittom and Officer Mike Lucht responded to the apartment of
11 Wangsheng Leng and Liping Yang, a married couple, on August 5, 2018 after the
12 Issaquah Police Department received a 911 call from a neighbor reporting what he
13 believed to be a domestic dispute, and what he believed was the sound of things
14 being thrown. He also reported he believed approximately four subjects were
15 involved.
16 2. When Officer Lucht knocked on the door, Ms. Yang opened the door. Officer
17 Lucht tried to communicate with her but it quickly became apparent there was a
18 language barrier.
19 3. The officers entered the apartment to investigate.
20 4. Officers Lucht and Whittom physically detained and handcuffed Mr. Leng.
21 5. After the officers handcuffed Mr. Leng, they observed his body go limp.
22 6. The officers called and requested emergency medical services to come to the
23 apartment to evaluate Mr. Leng.
24 7. Mr. Leng remained in handcuffs until the emergency medical services providers
25 arrived several minutes later.
26 8. Mr. Leng was taken to the hospital.

- 1 9. After multiple tests and several days later, the doctors discovered Mr. Leng had
- 2 suffered a spinal cord injury during the process of being detained and handcuffed
- 3 by the officers.
- 4 10. Wangsheng Leng had surgery related to the spinal cord injury.
- 5 11. Mr. Leng died in hospice care about a month after the interaction with the Issaquah
- 6 police officers.
- 7 12. ~~Defendants Lucht and Whittom acted under color of state law in their interactions~~
- 8 ~~with Wangsheng Leng.~~

9 **IV. ISSUES OF LAW**

10 **For Plaintiff, issues of law include:**

- 11 1. Whether Defendants Lucht and Whittom used excessive force in violation of the
- 12 Fourth Amendment against Wangsheng Leng when they forced him to the ground
- 13 on August 5, 2018.
- 14 2. Whether the City of Issaquah's negligence contributed to the use of force that
- 15 ultimately caused the death of Wangsheng Leng.
- 16 3. The amount of damages suffered by the Estate of Wangsheng Leng related to the
- 17 death of Wangsheng Leng, the pain and suffering Wangsheng Leng incurred as a
- 18 result of Defendants' actions, ~~and emotional pain and trauma suffered by Liping~~
- 19 ~~Yang as a result of Defendant's actions.~~
- 20 4. The amount of punitive damages Defendants Lucht and Whittom should be
- 21 required to pay.
- 22 5. Whether the jury will be instructed that the officers were required to take
- 23 Wangsheng Leng as they found him and cannot argue against liability or damages
- 24 due to Mr. Leng's preexisting medical conditions.
- 25 6. Whether Irving Scher will be permitted to testify.
- 26 7. Issues raised in the parties' respective motions *in limine*.

8. Should Plaintiff prevail, the amount to which Plaintiff's counsel are entitled to pursuant to 42 U.S.C. § 1988.

Defendants object to Plaintiff's issues of law and provide the following alternate issues of law.

1. Whether the amount of force applied to Wangsheng Leng while he was being handcuffed was reasonable and necessary under the totality of the circumstances known to Officer Lucht and Officer Whittom at the time of the handcuffing.
2. Whether Officer Lucht and/or Officer Whittom are entitled to qualified immunity from Plaintiff's Fourth Amendment excessive force claim.
3. Whether Plaintiff's negligence claim should be dismissed consistent with the Ninth Circuit's interlocutory decision.
4. In the alternative, whether Officer Lucht or Officer Whittom took any affirmative acts of malfeasance leading up to the application of force on Mr. Leng that were a proximate cause of his injury.
5. Whether Plaintiff's claim for punitive damages should be dismissed consistent with the Ninth Circuit's interlocutory decision.
6. In the alternative, whether Officer Lucht and/or Officer Whittom's application of force on Mr. Leng was driven by evil motive or intent; or involved a reckless or callous indifference to the constitutional rights of others.

V. EXPERT WITNESSES

(a) Each party side shall be limited to one (1) expert witnesses on ~~the each~~ issues of _____.
(b) Subject to the parties adjudicated or still-pending *Daubert* motions and other motions *in limine*, the names and addresses of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiff

Dr. Jonathan Arden, M.D., c/o Plaintiff's counsel, will testify consistent with his reports concerning the injuries to Wangsheng Leng, his cause and manner of death, and his damages.

Sue Peters, c/o Plaintiff's counsel, will testify about accepted standards in policing and Defendants' departures from them, as described in her reports.

(2) On behalf of Defendants:

Irving Scher, Ph.D, c/o Defense counsel, will testify consistent with his report and the Court's evidentiary rulings.

Jeffery Paynter, c/o Defense counsel, will testify consistent with his report in the field of police practices.

Dr. Matthew Lacy, c/o Defense counsel, will testify consistent with his report in rebuttal to Dr. Arden.

VI. OTHER WITNESSES

Plaintiff's Witnesses				
<u>Name</u>	<u>Address</u>	<u>Expected testimony</u>	<u>Will testify</u>	<u>Possible witness only</u>
Asbell, Laura	c/o KBM	Sergeant Asbell has knowledge of facts regarding her interactions with Lucht, Whittom, Plaintiff and officers up the chain of command from the Issaquah Police Department		X
Berhbaum, Scott	c/o KBM	May testify about the topics covered in their deposition concerning the policies and negligence of Issaquah		X
Bilimoria, Farshaad, MD	Rm. G227 – 2211 Wesbrook Mall, Vancouver, BC Canada V6T 2B5	Dr. Bilimoria performed the autopsy of Wangsheng Leng and has knowledge cause of the investigation of the death of Mr. Leng and the causes of his death.		X
City of Issaquah (30(b)(6) designee)	c/o KBM	May testify about the policies and practices and negligence of Issaquah		X
Li, Qiongyang	c/o plaintiff's counsel	This witness has knowledge of facts regarding Plaintiff's claims of liability and damages in this case.	X	

1	Leming, James	245 SW Clark St., #2D, Issaquah, WA 98027	May testify about the topics covered in his deposition.		X
2	Somnit Lee, MD	Swedish Hospital, 747 Broadway, Seattle WA 98122-4037	May testify about their treatment of Wangsheng Leng after his interactions with Lucht and Whittom		X
3	Lucht, Michael	c/o KBM	Officer Lucht has knowledge of his interactions with Wangsheng Leng and Liping Yang.	X	
4	HuaLing, Wei	425-369-7468 105 Mountain Park Blvd Sw Apt 329 Issaquah 98027	May testify about their interactions with Wangsheng Leng, his health, and his life.		X
5	Huosheng, Sheng	105 Mountain park Blvd Sw Apt 329 Issaquah 98027	May testify about their interactions with Wangsheng Leng, his health, and his life		X
6	Simin, Xi	1600 NE 8th Ste Bellvue,WA 98004 425-246-5382	May testify about their interactions with Wangsheng Leng, his health, and his life.		X
7	Wilson, Christopher	c/o KBM	Commander in IPD who may have knowledge of his interactions with Liping Yang and the City's response to the death of Wangsheng Leng		X
8	Whittom, Kylen	c/o KBM	Officer Whittom has knowledge of facts regarding plaintiff's claims of liability in this case, training, policies, procedures and standards for police officers.	X	
9	Yang, Liping	c/o plaintiff's counsel	Ms. Yang has knowledge of facts regarding Plaintiff's claims of liability and damages in this case.	X	
10	Yuan, Amy	1009 205th Ave NE, Sammamish WA 98074	May testify about Plaintiff's damages claims and the life of Wangsheng Leng		X
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Defendants' Witnesses				
<u>Name</u>	<u>Address</u>	<u>Expected testimony</u>	<u>Will testify</u>	<u>Possible witness only</u>
Asbell, Laura	c/o KBM	Sergeant Asbell has knowledge of facts regarding plaintiff's claims of liability in this case training, policies, procedures and standards for police officers.		X
Bilimoria, Farshaad, MD	Vancouver, British Columbia	Dr. Bilimoria has knowledge of the investigation of the death of Mr. Leng and the causes of his death.	Will testify – this may be through his deposition transcript and/or remote testimony as he is out of the country.	
Lucht, Michael	c/o KBM	Officer Lucht has knowledge of facts regarding plaintiff's claims of liability in this case, training, policies, procedures and standards for police officers.	X	
Mellis, Mike	King County Sheriff's Office	This witness has knowledge of facts regarding the incident at issue in this case, the investigation he conducted and admissions made by Ms. Yang.	X	
Ramstad, Cody	Eastside Fire & Rescue Sammamish, WA	Will testify regarding evaluation and treatment of Mr. Leng on 8/5/2018.	X	
Paula Schwan	c/o KBM	May testify regarding Plaintiff's claims of liability in this case and actions by the City of Issaquah.		X
Whittom, Kylen	c/o KBM	Officer Whittom has knowledge of facts regarding plaintiff's	X	

		claims of liability in this case, training, policies, procedures and standards for police officers.		
2	Yang, Li	c/o plaintiff's counsel	This witness has knowledge of facts regarding Plaintiff's claims of liability and damages in this case.	X
5	Yang, Liping	c/o plaintiff's counsel	Ms. Yang has knowledge of facts regarding Plaintiff's claims of liability and damages in this case.	X

VII. EXHIBITS

Counsel shall meet and confer and file a revised exhibit list by May 26, 2022.

Plaintiff's Exhibits

EX. #	DESCRIPTION :	Authenticity	Admissibility	Objection	Admitted
10	1 Photographs of Wangsheng Leng on or after August 5, 2018	Stipulated	Stipulated		
11	2 Photographs of Wangsheng Leng before August 5, 2018	Stipulated	Stipulated		
12	3 Autopsy Report	Stipulated	Disputed	Defendants object to the redactions in this exhibit as no redaction should be made. It is otherwise not disputed.	
13	4 Apartment Photos	Stipulated	Stipulated		
14	5 Autopsy Photos	Stipulated	Stipulated		
15	6 CAD Report for Incident	Stipulated	Stipulated		
16	7 CAD Comments Info	Stipulated	Stipulated		
17	8 IPD Incident Report	Stipulated	Stipulated		
18	9 Issaquah Use of Force Report	Stipulated	Stipulated		
19	10 Request for Written Answers to Questions to	Stipulated	Disputed	Def per MIL 14 and 401, 403, 502	

Plaintiff's Exhibits					
EX. #	DESCRIPTION :	Authenticity	Admissibility	Objection	Admitted
	Lucht				
11	Written Answers to Questions Lucht	Stipulated	Stipulated		
12	Request for Written Answers to Questions to Whittom	Stipulated	Disputed	Def per MIL 14 and 401, 403, 502	
13	Written Answers to Questions Whittom	Stipulated	Stipulated		
14	IPD Dispatch Audio	Stipulated	Stipulated		
15	Letter of Somnit Lee	Stipulated	Disputed	801, 802, 803	
16	Richmond Beach Rehab Docs	Stipulated	Disputed	Pla Pending MIL rulings, for ID	
17	Neck Surgery Photos	Stipulated	Stipulated		
18	IPD, Call Detail Report	Stipulated	Stipulated		
19	IPD Policy 300, Use of Force	Stipulated	Disputed	Pla Pending MIL rulings, for ID	
20	IPD Policy 302, Use of Force Review Boards	Stipulated	Disputed	Def per MIL number 4 Pla Pending MIL rulings, for ID	
21	IPD Policy 306, Handcuffing and Restraint	Stipulated	Disputed	Pla Pending MIL rulings, for ID	
22	IPD Policy 310, Employee Applied Force Investigations	Stipulated	Disputed	Def per MIL number 4 Pla Pending MIL rulings, for ID	
23	Interview of Liping Yang Transcript	Stipulated	Disputed	Def 801, 802	
24	Use of Force Reports 2014-	Stipulated	Disputed	Def per MIL number 4	

Plaintiff's Exhibits					
EX. #	DESCRIPTION :	Authenticity	Admissibility	Objection	Admitted
	2018				
25	Use of Force Tables	Stipulated	Disputed	Def per MIL number 4	
26	Commander Wilson Document	Stipulated	Disputed	Def 401, 402	
27	King County Medical Examiner Docs	Stipulated	Disputed	Def object to pp.s 67, 71-72 only. 401, 402 Pla Pending MIL rulings, for ID	
28	Declaration of Liping Yang	Stipulated	Disputed	Def 801, 802	
29	Defendant City of Issaquah Interrogatory Responses	Stipulated	Disputed	Def 401, 402, 801, 802	
30	Defendant Lucht Interrogatory Responses	Stipulated	Disputed	Def 401, 402, 801, 802	
31	Defendant Whittom Interrogatory Responses	Stipulated	Disputed	Def 401, 402, 801, 802	
32	Defendant City of Issaquah Responses to Plaintiff's First Requests for Admission	Stipulated	Disputed	Def 401, 402	
33	Defendant City of Issaquah Responses to Plaintiff's Second Requests for Admission	Stipulated	Disputed	Def 401, 402	
34	Defendant Lucht's Responses to Plaintiff's Requests for Admission	Stipulated	Disputed	Def 401, 402	
35	Defendant	Stipulated	Disputed	Def 401, 402	

Plaintiff's Exhibits					
EX. #	DESCRIPTION :	Authenticity	Admissibility	Objection	Admitted
	Whittom's Responses to Plaintiff's Requests for Admission				
36	Plaintiff's Responses to City of Issaquah's First Interrogatories to Plaintiff	Stipulated	Disputed	Def 801, 802	
37	Plaintiff's Responses to City of Issaquah's Second Interrogatories to Plaintiff	Stipulated	Disputed	Def 801, 802	
38	Plaintiff's Responses to City of Issaquah's Third Interrogatories to Plaintiff	Stipulated	Disputed	Def 801, 802	
39	Notice of 30(b)(6) Deposition	Stipulated	Disputed	Def 401, 402, 801, 802	
40	Medical Records of Wansheng Leng provided to Dr. Arden	Stipulated	Disputed	Pla Pending MIL rulings, for ID	
41	Medical Imaging Records of Wangsheng Leng provided to Dr. Arden	Stipulated	Disputed	Pla Pending MIL rulings, for ID	
42	Audio of Interview of Liping Yang	Stipulated	Stipulated		
43	Swedish Emergency Room Records	Stipulated	Disputed	Def Objection to redactions only Pla Pending MIL rulings	
44	Swedish Progress Report	Stipulated	Disputed	Def Objection to redactions only	

Plaintiff's Exhibits					
EX. #	DESCRIPTION :	Authenticity	Admissibility	Objection	Admitted
				Pla Pending MIL rulings	
45	Surgery Records	Stipulated	Disputed	Def Objection to redactions only Pla Pending MIL rulings	
46	Swedish Notes (Various)	Stipulated	Disputed	Def Objection to redactions only Pla Pending MIL rulings	

Defendant Exhibits					
EX #	Description	Authenticity	Admissibility	Objection	Admitted
100	DSHS Assessment Details Current Interim assessment dated 07/23/2018 - Declaration of Susan Engels dated May 6, 2020 certifying the record	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
101	911 call audio (Issaquah 000025 or 000911 time edited)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
102	CAD Master Call Table (Issaquah 000993-94)	Stipulated	Stipulated		
103	Leng Medical Record UWNC Issaquah Family Med dated 1/2/2018 (000008-14)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
104	Leng Medical Record UWNC Issaquah Family Med dated 7/9/2018 (000002-7)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
105	Eastside Fire & Rescue Patient Care Record dated	Stipulated	Disputed	402, 403,404, 801, 802, MIL	

1	08/05/2018				
2	106 Bellevue Fire Department Patient Care Record dated 08/05/2018 (000002-4)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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4					
5	107 Swedish ER Intake Record dated 8/5/2018 (T-Scan 000031-34)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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8	108 Swedish nursing notes dated 8/5/2018 (000016-17)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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10	109 Swedish Exam by Dr. Inna Andrews filed on 8/6/2018 (T-Scan 000048-54)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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13	110 Swedish Progress notes by Vachiraporn Baum RN dated 8/6/2018 (T-Scan 000062-63)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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16	111 Swedish Progress notes by Dr. Andrew Gatien dated 8/6/2018 (T-Scan 000076)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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19	112 Swedish CT Head and CT cervical spine report dated 8/5/2018 (T-Scan 000153-155)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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22	113 Swedish MR brain and cervical spine report dated 8/9/2018 (T-Scan 000159-161)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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25	114 Swedish Discharge summary by Dr. Andrew Gatien dated 8/11/2018 (T-Scan 000043-46)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
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1	115	Swedish H&P summary notes by Dr. Richard Zhao dated 8/11/2018 (T-Scan 000291-293)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
2	116	Swedish Progress notes by Dr. Somnit Lee dated 8/20/2018 (T-Scan 000415-419)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
3	117	Swedish Discharge summary by Dr. Miwa Vernon dated 8/19/2018 (T-Scan 000283-287)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
4	118	KCME Office Investigator's Report by Jeannette McDonald dated 09/05/2018 (Leng 000068)	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
5	119	King County Medical Examiner Autopsy Report dated October 22, 2018 Unredacted	Stipulated	Disputed	402, 403,404, 801, 802, MIL	
6	120	X-ray photo of cervical spine (Issaquah 1031)	Stipulated	Stipulated		
7	121	Audio of Liping Yang interview with Detective Mellis – edited in accordance with motion in limine rulings	Stipulated	Disputed	402, 403,404, MIL	
8	122	State of Washington certificate of death (000047)	Stipulated	Stipulated		
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1 **VIII. DEPOSITION DESIGNATIONS**

2 **For Plaintiff:** None.

3 **For Defendants:** Dr. Farshaad Bilimoria (in the event he is not permitted to
4 testify via Zoom)

Defendants' Designation	Plaintiff's Objections	Admitted
8:7 – 49:5	8:22-9:2	
	17:17-17:23	
	19:24-21:13	
	21:25-24:16	
	25:1-30:6	
	30:17-32:16	
	35:2-13	
	35:16-36:6	
	37:20-38:21	
	39:14-25	
	40:1-17	
	41:9-16	
	42:5-19	
	43:2-11	
	43:18-21	
	44:6-11	
	44:13-45:8	
	45:15-46:20	
	47:15-49:1	

1 **IX. ACTION BY THE COURT**

2 (a) This case is scheduled for a trial before a jury on May 31, 2022, at 9am at the United
3 States District Court, 700 Stewart St, Seattle, WA 98101.

4 (b) Trial briefs were submitted to the Court on May 13, 2022.

5 (c) The Court has submitted proposed jury instructions to the parties. The parties'
6 objections or requested amendments to the jury instructions ~~are due by noon on May~~
7 ~~18th~~ ~~were submitted to the Court on May 18, 2022.~~

8 (d) The Court has submitted proposed *voir dire* to the parties. Suggested questions of either
9 party to be asked of the jury by the Court on *voir dire*, if any, were submitted to the Court
10 on May 13, 2022.

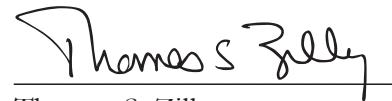
11 (e) Other rulings:

12 • The Court has issued multiple rulings on the parties' *Daubert* motions with
13 respect to experts for both plaintiff and the defense. *See* Dkts. ~~103~~, ~~112~~, 143.

14 • The ~~Court has issued parties are awaiting~~ rulings on:
15 ○ Plaintiff's motions *in limine*. Dkt. 140.
16 ○ Defendants' motions *in limine*. Dkt. 136.

17 This order has been approved by the parties as evidenced by the signatures of their counsel.
18 This order shall control the subsequent course of the action unless modified by a subsequent
19 order. This order shall not be amended except by order of the court pursuant to agreement of
20 the parties or to prevent manifest injustice.

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22 DATED this 20th day of May, 2022

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Thomas S. Zilly
United States District Judge

1 **FORM APPROVED**

2 /s/ David B. Owens

3 _____
Attorney for Plaintiff

4 /s/ Shannon M. Ragonesi

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Attorney for Defendants

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